

**IN THE UNITED STATES COURT OF FEDERAL
CLAIMS**

Siemens Government Technologies, Inc.,

Plaintiff,

v.

United States,

Defendant.

Case No. 1:22-cv-01870-EGB

The Hon. Judge Eric G. Bruggink

UNOPPOSED MOTION FOR STAY

Plaintiff Siemens Government Technologies, Inc. (“Siemens”), by undersigned counsel, hereby moves to stay this matter pending the resolution of Federal Circuit Case No. 22-2240, *Siemens Government Technologies, Inc., v. Secretary of the Navy*. The jurisdictional issue before the Federal Circuit in that case may affect the Court’s jurisdiction in this matter and may thus obviate any need to pursue this matter further. The United States has stated that it does not oppose this motion.

In Case No. 22-2240, the Federal Circuit will determine whether government action occurring after the award of an Energy Savings Performance Contract (ESPC), but before the award of a Task Order pursuant to that Contract, may give rise to a claim concerning a violation of the implied covenant of good faith and fair dealing that is within the jurisdiction of the Armed Services Board of Contract Appeals (the “ASBCA”). The same question is at issue in the instant case, which

prompted the parties to stay a related appeal before the ASBCA, as described in Siemens' Complaint before this Court. Should the Federal Circuit determine that the ASBCA is without jurisdiction in these circumstances, Siemens' intends to continue the instant litigation before this Court. Should the Federal Circuit rule that the Board does have jurisdiction, Siemens intends to move to continue the present stay and litigate the issue before the Board, returning to this litigation only if the Board should rule, despite the Federal Circuit's holding, that it is without jurisdiction to hear the instant case. In either event, it is in the interest of judicial economy to stay this matter pending the Federal Circuit's resolution of Case No. 22-2240.

Federal courts have broad discretion to manage and control the litigation before them. *See, e.g., Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962) (remarking on “the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases”); *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1358 (Fed. Cir. 2008) (noting that federal district courts “are afforded broad discretion to control and manage their dockets”). In litigation in which multiple cases raise a common legal issue, this Court routinely stays cases pending an appeal to conserve judicial and party resources. *See, e.g., S. Cal. Fed. Sav. & Loan v. United States*, 52 Fed. Cl. 531, 537 (2002) (noting that the Court stayed several cases pending appellate resolution of three exemplar cases); *Blue Cross Blue Shield of N. Dakota v. United States*, No. 18-1983, ECF No. 33 at 2 (Fed. Cl. July 9, 2019) (staying case pending resolution of related

appeals in the Federal Circuit); *Commonwealth Edison Co. v. United States*, No. 98-621, slip op. (Fed. Cl. Oct. 31, 2000) (staying case over plaintiff's objection pending resolution of related appeals in the Federal Circuit).

On January 24, 2022, undersigned counsel for Siemens conferred with Elizabeth Speck, counsel for the United States, who stated as follows: "The Government does not oppose this motion; however, once the stay is lifted the Government reserves the right to file a motion to dismiss for lack of jurisdiction and/or failure to state a claim. The Government is particularly concerned that Siemens has filed suit against the Government regarding this procurement before both the Armed Services Board of Contract Appeals (ASBCA), in ASBCA appeal 62806, which as indicated below is currently stayed, and before this Court."

Based on the foregoing, Plaintiff respectfully requests that this Court grant its motion to stay these proceedings until the related proceedings before the Federal Circuit and/or the ASBCA are resolved.

January 25, 2023

Of Counsel:

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Respectfully submitted,

/s/ Robert Nichols

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